



April 24, 2001

Mr. Dick Gregg, Jr.  
Gregg & Gregg, P.C.  
16055 Space Center Blvd., Suite 150  
Houston, Texas 77062

OR2001-1642

Dear Mr. Gregg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146332.

The City of Seabrook (the "city"), which you represent, received a request for information related to any complaints or grievances that involve a named former city police officer. You indicate that the city has released responsive information to this requestor with certain redactions. You provided to this office a copy of the information that the city released to the requestor, and a copy of the responsive information without redactions. You claim that the responsive information that the city did not release is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted materials include medical records. Access to medical records is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code, rather than by chapter 552 of the Government Code. Open Records Decision No. 598 (1991). Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). Such records must be released upon the patient's signed, written

consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). We have marked the submitted documents that are subject to the MPA.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You assert that the city may withhold "certain information in personnel files maintained by a city police department if it is reasonably related to the police officer's employment relationship with the department," under section 143.089 of the Local Government Code. You do not identify the portion of the submitted information that you contend is protected by this statute. The application of chapter 143 of the Local Government Code is delineated in section 143.002 of that code, which provides:

This chapter applies only to a municipality:

- (1) that:
  - (A) has a population of 10,000 or more;
  - (B) has a paid fire department and police department;
  - (C) has voted to adopt this chapter or the law codified by this chapter; or
- (2) whose election to adopt this chapter and whose acts subsequent to that election were validated by the law enacted by House Bill 822, Acts of the 73rd Legislature, Regular Session, 1993.

Loc. Gov't Code § 143.002. We refer to cities that are within the ambit of this statute as "civil service" cities. If the City of Seabrook is not a civil service city, the records of its police department are not protected by any provision of chapter 143 of the Local Government Code. We have no indication that the city is a civil service city.

Section 143.089 of the Local Government Code contemplates two different types of police officer personnel files that can be maintained by civil service cities: one that a police department is required to maintain as part of the officer's civil service file, and one that a police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department

shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App. – Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, No.04-99-00848-CV, 2000 WL 1918877 (Tex. App. -- San Antonio, Dec. 20, 2000, no pet. h.) (information reasonably relating to officer's employment relationship with department and maintained in the department's internal file pursuant to section 143.089(g) is confidential). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to that investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records contained in the (a) file are not confidential under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 2 (1990).<sup>1</sup> You have not provided enough information to this office to enable us to determine what, if any, of the submitted materials are made confidential by section 143.089(g) of the Local Government Code. Therefore, no information may be withheld under section 552.101 in conjunction with this statute.

Other statutory confidentiality provisions apply to specific portions of the submitted materials. These materials include information made confidential by section 1701.306 of the Occupations Code. This statute provides as follows:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

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<sup>1</sup> Ordinarily, information maintained in a police officer's civil service personnel file must be released to the public upon request, unless some other provision of chapter 552 of the Government Code permits the civil service to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990) (construction of Local Gov't Code § 143.089(f) provision requiring release of information as required by law).

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

We have marked the submitted materials that are subject to this statute. You must withhold the marked information under section 552.101 in conjunction with section 1701.306 of the Occupations Code.

The submitted files also contain criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history record information ("CHRI") which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the CHRI in the submitted materials. This information must be withheld under section 552.101 of the Government Code.

Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no

basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

Section 552.101 also encompasses the common law right to privacy. This right protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We have marked the submitted information that is protected by the common law right of privacy. This information must be withheld under section 552.101 of the Government Code.

The submitted documents include information excepted under section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

(a) Information is excepted from [required public disclosure]  
if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold Texas driver's license numbers, vehicle identification numbers, and Texas license plate numbers pursuant to section 552.130.

You contend that the former police officer's social security number, home address, home telephone number, and family member information is excepted from disclosure by section 552.117 of the Government Code. Section 552.117(2) of the Government Code excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer made an election under section 552.024 of the Government Code. In our opinion, however, section 552.117(2) does not apply to *former* peace officers. Section 552.117(4) protects this information for officers who do not make the election under 552.024 but are killed in the line of duty. However, there is no indication that the subject officer was killed in the line of duty. Therefore, section 552.117 applies to this former officer to the same extent that it applies to any other former employee. Under section 552.117(1), this coverage extends to current and former employees who request that this information be kept confidential under section 552.024. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records

Decision No. 530 at 5 (1989). Therefore, section 552.117 requires you to withhold this information only if the former officer made an election not to disclose the information before the request for information was received. If the former officer timely requested non-disclosure under section 552.024, you must withhold the former officer's social security number, and current and former home addresses and home telephone numbers, as well as information that reveals whether this former officer has family members, under section 552.117. For your convenience we have marked the type of information that would tend to reveal whether the former officer had family members.

In conclusion, you must release the information subject to the MPA, only in compliance with that act; you must withhold the declaration made confidential by section 1701.306 of the Occupations Code; you must withhold Criminal History Report Information; you must withhold social security numbers obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990; you must withhold the information that we have marked as protected by the common law right of privacy; you must withhold Texas driver's license numbers and Texas license plate numbers; you must withhold the former officer's social security number, and current and former home addresses and home telephone numbers, as well as information that reveals whether this former officer has family members, provided that before the request for information was received the officer elected that this information not be disclosed. All other information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

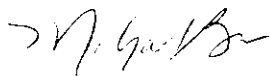
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael J. Burns  
Assistant Attorney General  
Open Records Division

MJB/r

Ref: ID# 146332

Encl: Submitted documents

cc: Ms. Heather Perterson  
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(w/o enclosures)